IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.3033 OF 2005

Nitin Lohar
vs.
State of Maharashtra ...Respondent

Mr.Shrihari Aney with Mr.R.K.Mendadkar i/b Mr.Mandar Goswami for the petitioner
Mr.R.M. Sawant, G.P. for respondents 1 and 3
Mr.P.M.Pradhan for respondent 2

CORAM: SMT.RANJANA DESAI & A.S.OKA,JJ.
DATE : DECEMBER 22,2005

P.C.:

1. The petitioner claims that he belongs to Gadi Lohar Nomadic Tribe (B). According to him the Competent Authority i.e. Taluka Executive Magistrate, Pune had issued caste certificate on 26th June 1992 in his favour stating that he belongs to Gadi Lohar Nomadic Tribe (B category). The petitioner has challenged in this petition the order dated 28th November 2005 passed by the Maharastra Administrative Tribunal (Tribunal for short) in Original Application No.984 of 2005.

2. Few facts may have to be stated to appreciate the controversy. The petitioner joined the services of the first respondent as Sales Tax Inspector in the year 1995-96. In the year 1996-97 the petitioner came to be selected as Class I Officer in Maharashtra Finance and Accounts Services from open

category. According to the petitioner in the year 1997-98 he came to be selected by Maharashtra Public Service Commission (MPSC for short) as Deputy Superintendent of Police/Assistant Commissioner of Police from NT-B category, however, on account of change in the merit list he came to be selected from open category. On 24th December 1998 the caste certificate submitted by the petitioner was referred to the Caste Scrutiny Committee, Pune. After following due procedure, on 30th July 1999 the Caste Scrutiny Committee validated the caste certificate of the petitioner holding that the petitioner belongs to Gadi Lohar Nomadic Tribe (Category - B). According to the petitioner the said Committee also validated the caste claims of brothers of the petitioner vide orders dated 17th June 1993 and 30th July 1999. Initially the petitioner was selected by respondent 2 as Deputy Superintendent of Police from NT-B category. According to the petitioner on 12th October 1999 the petitioner came to be appointed as Deputy Superintendent of Police from open category. According to the petitioner in the year 2004-2005 Mr.Eknath Khadse, M.L.A. raised an assembly question and disputed the social status of the petitioner and his family members and also filed complaints with the State Government, Police Department and M.P.S.C. etc. On 10th June 2005 the matter was again referred to Caste Scrutiny Committee and the said Committee confirmed that the petitioner belongs to Gadi Lohar Nomadic Tribe. Writ Petition No.6146 of 2005 came to be filed by

Mr.Eknath Khadse, MLA in this Court challenging the order dated 10th June 2005 which came to be rejected on 15th September 2005.

3. On the basis of a complaint the M.P.S.C. has issued a show cause notice dated 26th October 2005 asking the petitioner to submit a reply as to why recommendation made in his favour for being appointed as Deputy Superintendent of Police, Group (A) in Nomadic Tribe (B) category shall not be withdrawn. On 4th November 2005 the petitioner has submitted his interim reply. On 19th November 2005 the petitioner has received second notice from MPSC. The petitioner has challenged the said show cause notices by preferring Original Application before the Tribunal. The said Application is disposed of by the impugned order and hence this petition.

4. We have heard the learned counsel for the parties at length. Mr.Aney,learned senior counsel appearing for the petitioner draw our attention to the show cause notice dated 26th October 2005. He submitted that it is apparent from the notice that the M.P.S.C. has relied upon certain complaints received by it. He submitted that it was therefore necessary for the respondents to give a copy of the complaint to the petitioner. Mr.Aney further contended that as it is stated in the show cause notices that internal enquiry was conducted by the respondents, if reliance is placed on the internal enquiry

then it is necessary for the respondents to supply a copy of report of the said internal enquiry to the petitioner. He submitted that this grievance was made by the petitioner before the Tribunal. It appears that the learned counsel appearing for the respondent 2made a statement before the Tribunal that inspection of the relevant documents concerning the caste certificate of the applicant which may be relied upon by the M.P.S.C. will be given to the petitioner. That statement was accepted by the Tribunal and the Tribunal permitted the petitioner to submit an application for seeking inspection of the documents. Mr.Aney submitted that the Tribunal ought to have directed the respondents to supply a copy of the complaint and the report of internal enquiry conducted by the respondents to the petitioner or at least inspection thereof ought to have been directed to be given.

5. So far as the complaint is concerned Mr.Pradhan, learned counsel for the respondent 2 has made a statement that a copy of questions raised in the assembly in respect of the petitioner, a copy of the reply to the said questions and a copy of the petition filed by Mr.Eknath Khadse will be given to the petitioner. In view of this statement, it is not necessary for us to further go into this aspect because this grievance has been adequately met by the statement made by Mr.Pradhan. So far as internal enquiry is concerned, Mr.Pradhan stated that there is no enquiry report with regard

to the internal enquiry and therefore, there is no question of relying on any enquiry report. He submitted that there are certain inter departmental communications which being confidential in nature, cannot be supplied to the petitioner. Since, there is no enquiry report as contended by Mr.Pradhan and since M.P.S.C. is not relying upon any enquiry report, there is no question of giving a copy of the same to the petitioner. So far as inter departmental communications are concerned, in our opinion, reliance placed by Mr.Pradhan on the decision of the Supreme Court in Krishna Chandra Tandon Vs. Union of India, AIR 1974 Supreme Court 1589 is apt. In that case while considering somewhat similar fact situation the Supreme Court has observed that documents of the nature of interdepartmental communications between officers preliminary to the holding of enquiry have really no importance unless the Enquiry Officer wants to rely on them for his conclusions. In the light of this judgment, in our opinion, the petitioners will not be entitled to get copies of inter departmental communications at this stage particularly when they are confidential.

6. The third submission of Mr.Aney is that the Caste Scrutiny Committee has adjudicated upon the petitioners' caste claim twice and held in his favour. He submitted that it is not open for the M.P.S.C. to go into that aspect. In this connection, he relied upon the judgment of the Supreme Court

in Madhuri Patil Vs. Additional Commissioner, Tribal Development, AIR 1995 Supreme Court 94 where the Supreme Court has stated that the order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution of India. For the same proposition Mr.Aney also relied upon the judgment of Supreme Court in Sudhakar Vithal Kumbhare vs. State of Maharashtra & others, (2004) 9 Supreme Court Cases 481 and the judgment of Madras High Court in K.K.Senthilkumaran and another vs. The Secretary of Tamil Nadu Public Service Commission, 2004 Writ LR 372. Mr.Aney pointed out that Section 7 of Sub Section 2 of the Maharashtra Scheduled castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and Verification of) Caste Certificate Act, 2000 states that the order passed by the Caste Scrutiny Committee under the said Act shall be final and shall not be challenged before any authority or court except before the High Court under Article 226 of Constitution of India. Mr.Aney therefore, contended that no enquiry on the basis of show cause notices as regards caste claim of the petitioner can be conducted by the M.P.S.C. and the Tribunal failed to take a note of this submission advanced on behalf of the petitioner.

7. Mr.Aney then submitted that the Tribunal ought to have considered the petitioner’s prayer for personal hearing. He

submitted that though there are no provisions for personal hearing in the rules framed by M.P.S.C. when rules are silent the principles of natural justice must be read into them. He submitted that the Tribunal erred in keeping the questions as regards personal hearing and the issue of jurisdiction of M.P.S.C. open.

8. In our opinion, no interference is necessary with the impugned order. Since Mr.Pradhan, learned counsel for respondent M.P.S.C. has made a statement which we have accepted that the relevant documents which we have noted hereinabove will be supplied to the petitioner, the petitioner's grievance is redressed. The other questions raised by the petitioners can always be raised by the petitioner in the reply filed by the petitioner to the show cause notice. We do not find any infirmity in the decision of the Tribunal in keeping the said questions open. Petition is rejected. The time schedule fixed by the Tribunal is extended by a period of one week.

(SMT.RANJANA DESAI,J.)

(ABHAY S.OKA,J.)